

September 27, 2001

MEMORANDUM TO: John T. Larkins, Executive Director
Advisory Committee on Reactor Safeguards

FROM: James E. Lyons, Director */RA/*
New Reactor Licensing Project Office
Office of Nuclear Reactor Regulation

SUBJECT: UPDATE RULEMAKING FOR 10 CFR PART 52

The purpose of this memorandum is to provide the Advisory Committee on Reactor Safeguards (ACRS) with the status of the NRC staff's 10 CFR Part 52 update rulemaking. The New Reactor Licensing Project Office (NRLPO) has the lead for this rulemaking. NRLPO has just released draft rule language for Part 52 (see attachment 1), in accordance with a staff requirements memorandum dated August 2, 2001. The draft rule language will be posted on the NRC's ruleforum web site for stakeholder review and comment.

This rulemaking will amend Part 52 and associated regulations based on experience gained from design certification reviews and discussions with stakeholders on the early site permit and combined license processes. These changes should reduce the regulatory burden for future applicants and improve the effectiveness of 10 CFR Part 52 with clarifying language. The NRC staff has determined that Part 52 does not need any significant changes in order to process future applications for gas-cooled or other advanced reactor designs. We expect to provide the proposed rule package to the Commission by April 1, 2002.

Attachment: As stated

CONTACT: Jerry N. Wilson, NRR
415-3145

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DRAFT RULE LANGUAGE

as of September 21, 2001

The NRC staff has released the following draft rule language in response to guidance from the Commission dated August 2, 2001. The NRC planned to update 10 CFR Part 52 after it gained experience from the design certification reviews. In addition, NRC identified other issues from discussions with stakeholders on the early site permit and combined license processes, and from comments submitted by the Nuclear Energy Institute (NEI) on April 3, 2001. As a result, NRC has initiated this rulemaking to make corrections to 10 CFR Parts 21, 50, 52 (including the three design certification rules), 72, and 140 and to modify 10 CFR Part 52 to enhance its provisions.

This draft rule language is preliminary and may be incomplete in one or more respects. This draft rule language was released to inform stakeholders of the current status of the 10 CFR Part 52 update rulemaking and to provide stakeholders with an opportunity to comment on the draft revisions. Two petitions for rulemaking submitted by NEI are related to this planned update to Part 52. PRM-52-1 proposes to amend Part 52 to treat as resolved in an early site permit and combined license proceeding any siting and programmatic information that was previously reviewed and approved by the NRC for an existing reactor site. PRM-52-2 would amend Parts 51 and 52 to remove the requirements for evaluation of alternative sites, alternative sources of energy, and need for power in connection with, *inter alia*, issuance of early site approvals and permits, and combined licenses. These petitions are available for review on this rulemaking Web site and comments are requested. The NRC staff takes no position on the need for, or appropriateness of, NEI's proposed rule language.

Part 52 - Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants

1. AUTHORITY: will be provided in proposed rule.

2. Delete the current title of 10 CFR Part 52 and replace it with: "Additional Licensing Processes for Nuclear Power Plants"

GENERAL PROVISIONS

3. Section 52.1 is revised to read as follows:

§ 52.1 This part governs the issuance of **design approvals and certifications**, early site permits, ~~standard design certifications, and combined~~ **and various** licenses for nuclear power facilities licensed under Section 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). This part also gives notice to all persons who knowingly provide to any **licensee**, holder of, or applicant for an ~~early site permit, standard design certification, or combined license~~ **approval, certification, permit, or license**, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services, that relate to the activities of a **licensee**, holder of, or applicant for an ~~early site permit, standard design certification, or combined license~~ **approval, certification, permit, or license**, subject to this part, that they may be individually subject to NRC enforcement action for violation of ~~§ 52.9~~ **the provisions in § 50.5.**

4. Renumber § 52.3(e) as § 52.3(f) and add the following new definition:

§ 52.3(e) “Modular design” means: (1) A nuclear power station design that consists of two or more nuclear reactor modules, where each reactor module is capable of being safely operated independent of the state of completion of any other reactor module co-located on the same site [The nuclear power station may have some shared or common systems]; or (2) A nuclear power reactor design composed of subassemblies which, when assembled with other modules and/or structures, systems, and components onsite, constitutes a complete nuclear power reactor capable of safe operation.

5. Add Section 52.4 Written communications. [Revisions may be necessary for this section to properly include licensees, holders of, or applicants for an approval, certification, permit, or license issued under this part.]

§ 52.4(a) Address requirements. The signed original of all correspondence, reports, applications, and other written communications from the applicant or licensee to the Nuclear Regulatory Commission concerning the regulations in this part or individual license conditions must be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

(b) Distribution requirements. Copies of all correspondence, reports, and other written communications concerning the regulations in this part or individual license conditions must be submitted to the Nuclear Regulatory Commission at the locations and in the quantities set forth below (addresses for the NRC Regional Offices are listed in appendix D of part 20 of this chapter).

(1) Applications for amendment of **approvals, certifications**, permits and licenses; reports; and other communications. All written communications (including responses to: generic letters, bulletins, information notices, inspection reports, and miscellaneous requests for additional information), that are required of **licensees**, holders of ~~operating licenses or construction permits~~, **or applicants for approvals, certifications, permits, or licenses** issued pursuant to this part, must be submitted as follows, except as otherwise specified in paragraphs (b)(2) through (b)(7) of this section: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility.

(2) Applications for **approvals, certifications**, permits and licenses, and amendments to applications. Applications for ~~construction permits, applications for operating licenses~~ **approvals, certifications, permits, licenses** and amendments to ~~either type of application~~ must be submitted as follows, except as otherwise specified in paragraphs (b)(3) through (b)(7) of this section.

(i) Applications for licenses for facilities described in ~~Sec. 10 CFR~~ 50.21 (a) and (c) and amendments to these applications: The signed original must be sent to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555 and one copy to the appropriate Regional Office.

(ii) Applications for permits and licenses for facilities described in ~~Sec. 10 CFR~~ 50.21(b) or ~~Sec. 50.22~~, and amendments to these applications: the signed original and 37 copies must be sent to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility.

(3) Acceptance review application. Written communications required for an application for determination of suitability for docketing pursuant to ~~Sec. 10 CFR~~ 50.30(a)(6) must be submitted as follows: the signed original and 13 copies to the Nuclear Regulatory Commission,

Document Control Desk, Washington, DC 20555 and one copy to the appropriate Regional Office.

(4) Security plan and related submittals. Written communications, as defined in paragraphs (b)(4) (i) through (iv) of this section must be submitted as follows: The signed original and three copies to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, and two copies to the appropriate Regional Office;

(i) Physical security plan pursuant to ~~Sec.~~ **10 CFR 50.34**;

(ii) Safeguards contingency plan pursuant to ~~Sec.~~ **10 CFR 50.34**;

(iii) Change to security plan, guard training and qualification plan, or safeguards contingency plan made without prior Commission approval pursuant to ~~Sec.~~ **10 CFR 50.54(p)**;

(iv) Application for amendment of physical security plan, guard training and qualification plan, or safeguards contingency plan pursuant to ~~Sec.~~ **10 CFR 50.90**.

(5) Emergency plan and related submittals. Written communications as defined in paragraphs (b)(5)(i) through (iii) in this section, must be submitted as follows: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, two copies to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(i) Emergency plan pursuant to ~~Sec.~~ **10 CFR 50.34**;

(ii) Change to an emergency plan pursuant to ~~Sec.~~ **10 CFR 50.54(q)**;

(iii) Emergency implementing procedures pursuant to appendix E.V of this part **50**.

(6) Updated FSAR. An updated Final Safety Analysis Report (FSAR) or replacement pages, pursuant to ~~Sec.~~ **10 CFR 50.71(e)** must be submitted as follows: the signed original and 10 copies to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(7) Quality assurance related submittals. (i) A change to the Safety Analysis Report quality assurance program description pursuant to ~~Sec.~~ **10 CFR 50.54(a)(3)** or ~~Sec.~~ **50.55(f)(3)**, or a change to a licensee's NRC-accepted quality assurance topical report pursuant to ~~Sec.~~ **10 CFR 50.54(a)(3)** or ~~Sec.~~ **50.55(f)(3)**, must be submitted as follows: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(ii) A change to an NRC-accepted quality assurance topical report from non licensees (i.e., architect/engineers, NSSS suppliers, fuel suppliers, constructors, etc.) must be submitted as follows: one signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

(8) Certification of permanent cessation of operations. The licensee's certification of permanent cessation of operations, pursuant to ~~Sec.~~ **10 CFR 50.82(a)(1)**, must state the date on which operations have ceased or will cease, and the signed and notarized original must be submitted to: The Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555-0001.

(9) Certification of permanent fuel removal. The licensee's certification of permanent fuel removal, pursuant to ~~Sec.~~ **10 CFR 50.82(a)(1)**, must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and the signed and notarized original must be submitted to: The Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555-0001.

(c) Form of communications. All copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements may be granted for the submittal of

micrographic, photographic, or electronic forms. Prior to making any submittal in other than paper form, the applicant or licensee must contact the Information and Records Management Branch, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7230, to obtain specifications, copy requirements, and prior approval.

(d) Delivery of communications. Written communications may be delivered to the Document Control Desk at 11555 Rockville Pike, Rockville, Maryland between the hours of 8:15 a.m. and 4:00 p.m. Eastern Time. If a submittal due date falls on Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(e) Regulation governing submission. Licensees and applicants submitting correspondence, reports, and other written communications pursuant to the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submittal, the specific regulation or other basis, requiring submission.

(f) Conflicting requirements. The communications requirements contained in this section and ~~Secs. 10 CFR~~ 50.12, 50.30, 50.36, 50.36a, 50.44, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.62, 50.71, 50.73, 50.82, 50.90, and 50.91 supersede and replace all existing requirements in any license conditions or technical specifications in effect on January 5, 1987. Exceptions to these requirements must be approved by the Information and Records Management Branch, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415-7230.

Subpart A - Early Site Permits

6. In § 52.17(a), paragraph (1) is revised to read as follows:

§ 52.17(a)(1) The application must contain the information required by Sec. 50.33 (a) through (d), the information required by § 50.34 (a)(12) and (b)(10), and to the extent approval of emergency plans is sought under paragraph (b)(2)(ii) of this section, the information required by § 50.33 (g) and (j), and § 50.34 (b)(6)(v) of this chapter. The application must also contain a description and safety assessment of the site on which the facility is to be located. The assessment must contain ~~an~~ a sufficient analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in § 50.34(a)(1) of this chapter. Site characteristics must comply with part 100 of this chapter. In addition, the application should describe the following:

- (i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;
- (ii) The boundaries of the site;
- (iii) The proposed general location of each facility on the site;
- (iv) The anticipated maximum levels of radiological and thermal effluents each facility will produce;
- (v) The type of cooling systems, intakes, and outflows that may be associated with each facility;
- (vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site;
- (vii) The location and description of any nearby industrial, military, or transportation facilities and routes; and
- (viii) The existing and projected future population profile of the area surrounding the site.

7. Delete § 52.37.

Subpart B - Standard Design Certifications

8. Delete § 52.43(c).

9. Delete §§ 52.45(c) and 52.45(d) and replace with the following:

§ 52.45(c) The applicant must comply with the filing requirements of 10 CFR 50.30(a) and 50.30(b) as these requirements would apply to an application for a nuclear power plant construction permit.

10. In § 52.47, paragraph (a)(1)(vi) is revised to read as follows:

§ 52.47(a)(1)(vi) Proposed inspections, tests, analyses, and acceptance criteria which are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, a plant which references the design is built and will operate in accordance with the design certification, the provisions of the Atomic Energy Act, and the Commission's rules and regulations that are applicable to the certified design.

11. Delete § 52.47(b)(2)(ii).

12. In § 52.59, paragraph (a) is revised to read as follows:

§ 52.59(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations applicable and in effect at the time the certification was issued, and any other requirements the Commission may wish to impose after a determination that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements and that the direct and indirect costs of implementation of those requirements are justified in view of this increased protection. In addition, the applicant for renewal may request an amendment to the design certification. The Commission shall grant the amendment request if it determines that the amendment will comply with the Atomic Energy Act and the Commission's regulations in effect at the time of renewal. If the amendment request entails such an extensive change to the design certification that an essentially new standard design is being proposed, an application for a design certification shall be filed in accordance with § 52.45 and 52.47 of this part.

13. In § 52.63, paragraphs (a)(1), (a)(2), and (b)(2) are revised to read as follows:

§ 52.63(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification is in effect under § 52.55 or 52.61, the Commission may not modify, rescind, or impose new substantive requirements on the certification, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that a substantive modification is necessary either to bring the certification or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security. The rulemaking procedures must provide for notice and comment and an opportunity for the party which applied for the certification to request an informal hearing which uses the procedures described in § 52.51 of this subpart.

§ 52.63(a)(2) Any modification the NRC imposes on a design certification rule under paragraph (a)(1) of this section will be applied to all plants referencing the certified design,

except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(3), ~~(a)(4), or (b)~~ or (b)(1) of this section.

§ 52.63(b)(2) Subject to § 50.59, a licensee who references a standard design certification may make changes to the design of the nuclear power facility, without prior Commission approval, unless the proposed change involves a change to the design as described in the rule certifying the design. The licensee shall maintain records of all changes to the facility and these records must be maintained and available for audit until the date of termination of the license.

Subpart C - Combined Licenses

14. Renumber § 52.73 as § 52.73(a) and add the following paragraph:

52.73(b) The Commission will require, prior to granting a combined license which references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certified design.

15. Section 52.75 is revised to read as follows:

§ 52.75 Any person except one excluded by 10 CFR 50.38 may file an application for a combined license for a nuclear power facility with the Director of Nuclear Reactor Regulation. The applicant shall comply with the filing requirements of 10 CFR 50.4 and 50.30 (a) and (b), ~~except for paragraph (b)(6) of Sec. 50.4,~~ as they would apply to an application for a nuclear power plant construction permit. The fees associated with the filing and review of the application are set out in 10 CFR Part 170.

16. In § 52.79, paragraph (b) is revised to read as follows:

§ 52.79(b) The application must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34.

(1) If the application does not reference a certified design, the application must comply with the requirements of § 52.47(a)(2) for level of design information, and shall contain the technical information required by §§ 52.47(a)(1) (i), (ii), (iv), ~~and (v)~~ and (3); **§ 52.47(b)(2)(i) (A)(1)-(3) or (B);** and, if the design is modular, § 52.47(b)(3).

(2) **If the application does not reference a certified design, the application must contain a plant-specific probabilistic risk assessment (PRA).**

(3) ~~The final safety analysis report and other required information may incorporate by reference the final safety analysis report for a certified standard design. In particular, an application referencing a certified design must~~ **include the information approved for incorporation by reference in a design certification rule;** describe those portions of the design which are ~~site-specific~~ **not described in the certified design**, such as the service water intake structure and the ultimate heat sink; ~~An application referencing a certified design must also demonstrate compliance with the interface requirements established for the design under § 52.47(a)(1); and have available for audit procurement specifications and construction and installation specifications in accordance with § 52.47(a)(2) and 52.73(b).~~

(4) **An application referencing a certified design must include a plant-specific PRA that uses the design-specific PRA and is updated to account for site-specific design information and any design changes.**

17. Section 52.83 is revised to read as follows:

§ 52.83 Unless otherwise specifically provided for in this subpart, all provisions of 10 CFR Part 50 and its appendices applicable to holders of construction permits for nuclear power reactors also apply to holders of combined licenses issued under this subpart. Similarly, all provisions of 10 CFR Part 50 and its appendices applicable to holders of operating licenses also apply to holders of combined licenses issued under this subpart, once the Commission has made the findings required under ~~Sec. 52.99~~ § 52.103(g), provided that, as applied to a combined license, 10 CFR 50.51 must require that the initial duration of the license may not exceed 40 years from the date on which the Commission makes the findings required under ~~Sec. 52.99~~ the combined license was issued. However, any limitations contained in Part 50 regarding applicability of the provisions to certain classes of facilities continue to apply. Provisions of 10 CFR Part 50 that do not apply to holders of combined licenses issued under this subpart include §§ 50.55 (a), (b) and (d), and 50.58.

18. In § 52.93, paragraph (a) is revised to read as follows:

§ 52.93(a) Applicants for a combined license under this subpart, or any amendment to a combined license, may include in the application a request, under 10 CFR 50.12, for an exemption from one or more of the Commission's regulations, ~~including any part of a design certification rule. The Commission shall grant such a request if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a) or 52.63(b)(1) if the exemption includes any part of the design certification rule.~~ If the application references a certified design and the subject of the request is within the scope of the certified design, the exemption must be requested in accordance with any applicable provisions of the design certification rule.

19. Section 52.97 is revised to read as follows:

§ 52.97 (a) The Commission shall issue a combined license for a nuclear power facility upon finding that the applicable requirements of 10 CFR 50.40, 50.42, 50.43, 50.47(should this reference be modified or deleted?), and 50.50 have been met, and that there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's rules and regulations.

(b)(1) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's rules and regulations.

(2)(i) Any modification to, addition to, or deletion from the terms of a combined ~~construction and operating~~ license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on these amendments.

(ii) The Commission may issue and make immediately effective any amendment to a combined ~~construction and operating~~ license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed in accordance with the procedures specified in 10 CFR 50.91.

(c) If the combined license does not reference a certified design, then changes, tests, and experiments are subject to § 50.59 of this chapter.

(d) If the combined license references a certified design, then--

(1) Changes and departures within the scope of the certified design are subject to any applicable provisions of the design certification rule: or

(2) Changes, tests, and experiments outside the scope of the certified design are subject to § 50.59 of this chapter, unless the proposed change or departure affects the information in the design certification rule.

20. Section 52.99 is revised to read as follows:

§ 52.99 (a) Holders of combined licenses shall comply with the provisions of 10 CFR § 50.70 and § 50.71 [~~Conforming changes may be necessary for this section~~].

(b) The licensee shall perform and demonstrate conformance with all of the inspections, tests, analyses, and acceptance criteria (ITAAC) in the combined license before initial loading of fuel into the nuclear reactor. With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and pre-operational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

(c) A designated officer or manager of the licensee shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

(d) In the event that an activity is subject to an ITAAC, and the licensee has not demonstrated that the ITAAC has been satisfied, the licensee may take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of the applicable design certification rule, or request a license amendment under § 52.97(b), as applicable.

~~(e) After issuance of a combined license, the Commission shall ensure that the required inspections, tests, and analyses in the ITAAC are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. If an NRC finding on successful completion of an ITAAC has not been made in connection with issuance of the combined license, then~~ at appropriate intervals during construction, the NRC staff shall publish in the Federal Register notices of the successful completion of inspections, tests, and analyses.

21. Section 52.103 is revised to read as follows:

§ 52.103 (a) Not less than one hundred and eighty days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined ~~construction permit and operating~~ license under subpart C of this part, the Commission shall publish in the FEDERAL REGISTER notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within sixty days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the ~~inspections, tests, analyses, and acceptance criteria (ITAAC) in the combined~~ license.

(b) A request for hearing under paragraph (a) of this section shall show, prima facie, that--

(1) One or more of the acceptance criteria ~~of the ITAAC~~ in the combined license have not been, or will not be met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(c) After receiving a request for a hearing, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(d) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under paragraph (a) of this section, and shall state its reasons therefor.

(e) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within one hundred and eighty days of the publication of the notice provided by paragraph (a) of this section or the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accord with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission shall determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(g) Prior to operation of the facility, the Commission shall find that the acceptance criteria of the ITAAC in the combined license are met. If the combined license is for a modular design, each reactor module may require a separate finding as construction proceeds.

(h) After the Commission has made the finding in paragraph (g) of this section, the ITAAC do not, by virtue of their inclusion in the design certification rule or combined license, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a hearing under paragraph (a) of this section, their expiration will occur upon final Commission action in such proceeding.

22. Renumber §§ 52.111 and 52.113 as §§ 52.121 and 52.123.

Appendix A - Design Certification Rule for the U.S. Advanced Boiling Water Reactor

23. Renumber § II.G as II.H and add the following new definition:

§ II.G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means: (i) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or (ii) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

24. In § VIII, paragraphs B.5.a-d are revised to read as follows:

§ VIII.B.5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, the technical specifications, or requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section. When

evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, **requires a license amendment if it would:**

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, **requires a license amendment if:**

(1) There is **more than a minimal increase** in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is **more than a minimal increase** in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure **requires a license amendment pursuant to paragraphs B.5.b or B.5.c** of this section, it is governed by 10 CFR 50.90.

25. Paragraph X.A.3 is revised to read as follows:

§ X.A.3. An applicant or licensee who references this appendix shall prepare and maintain written ~~safety~~ evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

26. Paragraph X.B.1 is revised to read as follows:

§ X.B.1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the ~~safety~~ evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

Appendix B - Design Certification Rule for the System 80+ Design

27. Section I. is revised to read as follows:

§ I. Appendix B constitutes design certification for the System 80+¹ standard plant design, in accordance with 10 CFR Part 52, Subpart B. The applicant for certification of the

System 80+ design was Combustion Engineering, Inc. (ABB-CE), which is now Westinghouse Electric Company LLC.

28. Renumber § II.G as II.H and add the following new definition:

§ II.G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means: (i) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or (ii) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

29. In § VIII, paragraphs B.5.a-d are revised to read as follows:

§ VIII.B.5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, the technical specifications, or requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is more than a minimal increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is more than a minimal increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

30. Paragraph X.A.3 is revised to read as follows:

§ X.A.3. An applicant or licensee who references this appendix shall prepare and maintain written safety evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

31. Paragraph X.B.1 is revised to read as follows:

§ X.B.1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the safety evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

Appendix C - Design Certification Rule for the AP600 Design

32. Renumber § II.G as II.H and add the following new definition:

§ II.G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means: (i) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or (ii) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

33. In § VIII, paragraphs B.5.a-d are revised to read as follows:

§ VIII.B.5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, the technical specifications, or requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is **more than a minimal increase** in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is **more than a minimal increase** in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure **requires a license amendment pursuant to paragraphs B.5.b or B.5.c** of this section, it is governed by 10 CFR 50.90.

34. Paragraph X.A.3 is revised to read as follows:

§ X.A.3. An applicant or licensee who references this appendix shall prepare and maintain written ~~safety~~ evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

35. Paragraph X.B.1 is revised to read as follows:

§ X.B.1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the ~~safety~~ evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

Appendix O - Standardization of Design: Staff Review of Standard Designs

36. Section 3 is revised to read as follows:

§ 3. The submittal for review of the standard design shall include the information described in §§ 50.33 (a) through (d) of this chapter and the applicable technical information required by §§ 50.34 (a) and (b), **and (g)**, as appropriate, **§§ 52.47(a)(1)(ii), (iv), and (v)**, and 50.34a of this chapter (other than that required by §§ 50.34(a)(6) and (10), 50.34(b)(1), (6)(i), (ii), (iv), and (v) and 50.34(b)(7) and (8)). The submittal shall also include a description, analysis and evaluation of the interfaces between the submitted design and the balance of the nuclear power plant. With respect to the requirements of §§ 50.34(a)(1) of this chapter, the submittal for review of a standard design shall include the site parameters postulated for the design, and an analysis and evaluation of the design in terms of such postulated site parameters. The information submitted pursuant to § 50.34(a)(7) of this chapter, shall be ~~limited~~ **limited** to the quality assurance program to be applied to the design, procurement and fabrication of the structures, systems, and components for which design review has been requested and the information submitted pursuant to § 50.34(a)(9) of this chapter shall be limited to the qualifications of the person submitting the standard design to design the reactor or major portion thereof. The submittal shall also include information pertaining to design features that affect plans for coping with emergencies in the operation of the reactor or major portion thereof.

37. Section 5 is revised to read as follows:

§ 5. Upon completion of their review of a submittal under this appendix, the NRC ~~regulatory~~ staff shall publish in the FEDERAL REGISTER a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC Web site, <http://www.nrc.gov>, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the ~~regulatory~~ **NRC** staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there

exists significant new information which substantially affects the earlier determination or other good cause. **A design approval issued pursuant to this appendix is valid for five years from the date of issuance.**

Part 21 - Reporting of Defects and Noncompliance

In § 21.2, paragraph (a) is revised to read as follows:

§ 21.2 (a) The regulations in this part apply, except as specifically provided otherwise in parts 31, 34, 35, 39, 40, 60, 61, 70, or part 72 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high level radioactive waste, or to construct, manufacture, possess, own, operate or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and to each director and responsible officer of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation pursuant to part 50 **or part 52** of this chapter, an ISFSI for the storage of spent fuel licensed pursuant to part 72 of this chapter, a MRS for the storage of spent fuel or high level radioactive waste pursuant to part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 60, 61, 70, 71, or part 72 of this chapter.

Part 50 - Domestic Licensing of Production and Utilization Facilities

Delete Appendices M, N, O, and Q from 10 CFR Part 50.

Part 72 - Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-level Radioactive Waste

Subpart K--General License for Storage of Spent Fuel at Power Reactor Sites

Section 72.210 is revised to read as follows:

§ 72.210 A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under part 50 **or part 52** of this chapter.

Part 140 - Financial Protection Requirements and Indemnity Requirements

In § 140.2, paragraph (a)(1) is revised to read as follows:

§ 140.2(a)(1) To each person who is an applicant for or holder of a license issued pursuant to 10 CFR parts 50, **52, or** ~~and~~ 54 of this chapter to operate a nuclear reactor, and